



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, MNDC, OLC, FF, OPR, MNR, MNSD

Introduction

This hearing dealt with applications under the *Residential Tenancy Act* (the *Act*) from Landlord MY (the landlord) naming Tenant JMZ (the female tenant) as the sole Respondent, and the tenants naming Landlords SWY and SFY (the landlords) as Respondents. The landlord applied for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- authorization to retain all or a portion of the security deposit for this tenancy in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the female tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order regarding a disputed additional rent increase pursuant to section 43; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants confirmed that they received the landlords' 10 Day Notice posted on their door by the landlord on March 2, 2014. The female landlord who attended this hearing (the female landlord) and the landlords' agent (the agent) confirmed that the landlords received copies of the tenants' dispute resolution hearing package handed to the landlords on February 20, 2014. The tenants confirmed that they received a copy of the landlord's dispute resolution hearing package sent to the

tenants by registered mail on March 11, 2014. Both parties also confirmed that they have received one another's written evidence packages. I am satisfied that the parties have served one another with all of the above documents in accordance with the *Act*.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent and utilities? Have the landlords issued a valid Notice of Rent Increase to the tenant(s)? Have the landlords contravened the *Act* in issuing the Notice of Rent Increase to the tenants? What is the correct monthly rent for this tenancy and are the tenants responsible for making gas utility payments to the landlords? Are the tenants entitled to a monetary award for losses and damages arising out of this tenancy? Are either of the parties entitled to recover their filing fees from one another?

Background and Evidence

While I have turned my mind to all the documentary evidence, including invoices, bills, receipts, miscellaneous letters and notes, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

On August 22, 2009, the tenants and an agent acting for the landlord(s) signed a one-year fixed term Residential Tenancy Agreement (the first Agreement) for this rental unit. According to the terms of this first Agreement entered into written evidence by the tenants, monthly rent was set at \$1,300.00, payable in advance on the first of each month. This first Agreement, which was scheduled to end on August 31, 2010, stated that "Tenant will pay 50% of the hydro bill (electricity)." The landlords continue to hold the tenants' \$650.00 security deposit paid on or about August 22, 2009. The female landlord and the agent testified that there was an oral agreement between the parties whereby the tenants agreed to pay 50% of the gas bills for this rental property, as well as 50% of the hydro bills. The agent noted that the tenants paid 50% of both the gas and hydro bills since the tenants first occupied the premises until November 21, 2013. The tenants denied having made any such oral agreement to pay 50% of the gas bills for this property.

As neither party signed a new tenancy Agreement when the first Agreement expired, this tenancy became a periodic tenancy on September 1, 2010, under the same terms.

On September 1, 2011, the same agent acting on behalf of the landlords signed a new one-year fixed term Residential Tenancy Agreement (the second Agreement) with the female tenant. Both parties entered into written evidence copies of the second

Agreement which was to expire on August 31, 2012. The monthly rent in the second Agreement was set at \$1,350.00, payable in advance on the first of each month. The second Agreement also specified that the "Tenant will pay 50% of the hydro bill (electricity)." At the expiration of the second Agreement, the tenancy became a periodic tenancy as no new Agreement has been signed in its place.

Both parties agreed that the female landlord showed the tenants the gas and hydro bills each month, or at least most months, after which the tenants paid their 50% portion of both bills since they moved into these premises in September 2009.

Both parties entered into written evidence different copies of a Notice of Rent Increase issued by the landlord to the female tenant on an RTB authorized form. Initially, the landlords' agent testified that the Notice of Rent Increase dated November 27, 2012 increased the tenant's rent from \$1,350.00 by \$29.00 to \$1,379.00 as of March 1, 2014. However, after I asked her to clarify this testimony, the landlords' agent said that she had been mistaken and the Notice of Rent Increase was actually dated November 27, 2013. This sworn testimony was consistent with the date of both copies of the Notice of Rent Increase form entered into written evidence by the parties. However, the new rent date on this Notice entered into evidence by the tenants identified the date when this increased rent became payable as March 1, 2013. The copy of this Notice entered into written evidence by the landlords identified a "Revised" Notice in which the landlord or the landlords' agent had stroked out 2013 and substituted 2014 as the effective date when the rent would be increasing.

After the tenants received the landlord's Notice of Rent Increase, they contacted the RTB to obtain more information about the process whereby a landlord can increase rent. They raised concerns with the landlord that the landlord had circumvented the provisions of the *Act* by creating the second Agreement, and in so doing, raised the rent by \$50.00, an amount exceeding the amounts allowed under the *Regulation* issued under the *Act* and the provisions of Part 3 of the *Act*. In a document she created on November 28, 2013 and entered into written evidence, the female tenant maintained that the allowable rent increase for 2011 was 2.3%, which should have led to a maximum monthly rent increase of \$29.90 and not the \$50.00 charged by the landlord as of September 1, 2011. The tenant claimed that the landlord(s) owe the tenant(s) \$20.10 for overpaid monthly rent from September 2011 until February 2014, when they applied for dispute resolution.

In a February 20, 2014 letter to the landlords, the tenants noted that both of their Agreements stated that they were only required to pay 50% of the hydro bill for electricity. They maintained that the landlords had no legal right to request and collect

payments from the tenants for gas bills since 2009. They requested that the landlords obtain billing records from the gas provider from September 1, 2009 until February 20, 2014. They also requested that the landlords refund them the full amount of gas payments they had made to the landlords since September 1, 2009. In this letter, they also confirmed that they had no intention of paying the most recent two gas bills, covering the periods from November 21, 2013 until December 20, 2013, and from December 20, 2013 until January 24, 2014, in the total amount of \$170.69.

The tenants' original application for a monetary award of \$603.00 was accompanied by a Monetary Order Worksheet, in which the tenants requested an award of \$20.10 for each of the months from September 2011 until February 2014. The tenants' amended application for a monetary award of \$4,021.00 added \$3,343.00 for the recovery of the gas bills they had paid since September 2009. They also added \$75.00 to their claim for the lack of water for 24 hours when the water tank broke on March 24, 2014 and for the additional electricity required to run industrial heaters to repair water damage in the lower unit of this rental property.

The landlord's 10 Day Notice identified \$20.00 in rent owing as of March 1, 2014, and \$170.69 in utilities owing as of March 1, 2014.

Analysis – Application for an Order of Possession for Non-Payment of Rent and Utilities

Section 46(6) of the *Act* allows a landlord to “treat the unpaid utility charges as unpaid rent” allowing the landlord to issue a 10 Day Notice if “the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them.” In this case, it would appear that the unpaid utilities of \$170.69 cited in the landlord's 10 Day Notice covered the gas billing periods of November 21, 2013 to December 20, 2013 (\$82.28), and December 20, 2013 until January 24, 2014 (\$88.41). The landlords have not submitted any written evidence to demonstrate that they gave the tenant(s) a written demand to pay the \$170.69 cited in the 10 Day Notice. As such, I find that the landlords have wrongly included the \$170.69 in the 10 Day Notice, as the landlords have failed to comply with the provisions of section 45(6) of the *Act*.

This leaves \$20.00 in rent that the landlord and the landlords' agent claimed were owing for March 2014, as identified in the 10 Day Notice.

Part 3 of the *Act* establishes the process for imposing a rent increase during a tenancy. Sections 42 and 43 of the *Act* state that a landlord must use the correct RTB form in issuing a Notice of Rent Increase, which for 2014 cannot exceed 2.2 %, without an application for an Additional Rent Increase as set out in section 43(3) of the *Act*. Notices of Rent Increase need to be completed accurately in order to be of force.

In this case, I find on a balance of probabilities that the landlord's evidence regarding the Notice of Rent Increase was inconsistent and was "revised" as the landlord noted on the landlords' written evidence. The agent first claimed that the Notice of Rent Increase was issued in November 2012 to take effect on March 1, 2014. After correcting this sworn testimony to confirm that the Notice was issued in November 2013, the landlord then appears to have identified an incorrect date when the increased monthly rent was to take effect. Noticing this error, the landlord appears to have unilaterally and illegally altered the date when the Notice of Rent Increase was to take effect in the copy submitted into written evidence. A Notice of Rent Increase issued in November 2013 could clearly not take effect on March 1, 2013, eight months earlier. Given the confusion and the failures to follow the terms of the non-standard Agreements created by the landlord(s) for this tenancy, I do not accept the landlord's attempt to "revise" a document already issued to the tenant for a rent increase. The fact that the tenant was able to enter undisputed written evidence that the Notice of Rent Increase given to her stated that the rent was to increase on March 1, 2013 and not March 1, 2014 indicates that the landlord has had little regard for or understanding of the responsibilities of providing accurate information to the tenant with respect to issues as important as an increase in the monthly rent for this rental unit.

Under these circumstances, I find that the landlord has not issued a valid Notice of Rent Increase to the tenant. I find that the Notice of Rent Increase of November 27, 2013 is of no legal force or effect.

I further order that the monthly rent for this tenancy remains \$1,350.00 as set out in the second Agreement. I also find that the terms of the Agreement clearly state that the tenant is only responsible for paying 50% of the hydro costs. I find that the tenant is not responsible for paying any gas utility costs for this tenancy, as this provision was never included in either of the Agreements created by the landlord(s).

Analysis – Monetary Claims- Landlord's Application

Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply.

I find that the first Agreement with both tenants ended when the landlord's representative and the female tenant entered into the second Agreement on September 1, 2011. Any claim that either party would have at this stage would be pursuant to the second Agreement, with the exception of the security deposit retained from the previous joint tenancy.

As noted above, the second Agreement created by the landlord or the landlords' representatives clearly stated that the only additional payment that the tenant was supposed to make to the landlord was a payment of 50% of the hydro costs for this rental property. As such, I find no basis to the landlord's claim that he is entitled to a monetary award of \$248.87 for unpaid gas bills owing from this tenancy. As outlined above, I find that the tenant was not responsible for paying any gas bills during the tenancy which began with the second Agreement.

As the landlord has not issued a valid Notice of Rent Increase for this tenancy, the monthly rent remains \$1,350.00, the amount agreed to by the landlord's representative and the female tenant in their signed second Agreement. I dismiss the landlord's application for an additional \$20.00 in rent for the period from March and April 2014, the amount of unpaid rent claimed in the landlord's application.

I dismiss the landlord's claim for a monetary award without leave to reapply. As the landlord has been unsuccessful in this application, I make no order allowing the landlord to recover this fee from the tenant. As this tenancy continues, there is no need to consider the landlord's application to retain the security deposit for this tenancy.

Analysis – Monetary Claims- Tenants' Application

Based on the tenants' written evidence, I find that the tenants have overpaid their monthly rent since January 1, 2014. In the tenants' letters of December 30, 2013 and February 1, 2014, they advised the female landlord of their disagreement with the landlord's refusal to return their monthly rent cheques for January, February, March and April 2014. The tenants maintained that the landlord deposited their rent cheque of \$1,350.00 for January 2014. Based on their undisputed sworn testimony, the tenants have also paid \$1,350.00 for February 2014, and \$1,359.00 for each of March and April 2014.

As I find that the correct monthly rent for this rental unit remains \$1,350.00, the amount established in the second Agreement, I issue the tenants a monetary award in the amount of \$18.00 ($\$1,359.00 - \$1,350.00 = \$9.00 \times 2 \text{ months} = \18.00) for overpaid rent for the months of March and April 2014.

I have carefully considered the tenants' claim for the recovery of monthly rent in the amount of \$20.10 for each of the months between September 1, 2011 and the present. As was noted above, I find that the original tenancy created by the first Agreement ended on September 1, 2011, when the female tenant (and not both tenants) signed a new fixed term Residential Tenancy Agreement with the landlord's representative. The tenant confirmed that she was not forced to sign the second Agreement. As the tenants were by that time only in a periodic tenancy, I can only assume that there was some value to be gained by the female tenant entering into a new one-year fixed term tenancy Agreement on September 1, 2011. Since the monthly rent was very clearly identified as \$1,350.00 in the second Agreement, I dismiss the tenants' application for a monetary award to recover any of the monthly rent the tenants paid from September 1, 2011 until March 1, 2014, without leave to reapply.

I have also carefully considered the unusual circumstances regarding the tenants' payment of 50% of the monthly gas bills during the period from September 1, 2009 until November 21, 2013, when the tenants stopped making these payments.

The landlord and her agent maintained that the landlord(s) had an oral agreement with the tenants whereby the tenants agreed to pay one-half of the gas bills, as well as one-half of the hydro bills for this rental property. The landlords entered written evidence that another resident in the rental property also understood fully that the tenants in this property were responsible for paying 50% of the landlords' gas bills for this rental property. The female tenant did not dispute the female landlord's claim that she showed the tenant both the gas and hydro bills. The tenants did not dispute that they paid both sets of bills from September 2009 until November 2013, when the landlord issued the Notice of Rent Increase.

Both tenants testified that they trusted the landlords and their representatives were charging them the correct amounts of utilities as per the terms of their Agreements. They did not question the landlords on these issues until they received the Notice of Rent Increase, reviewed the Agreements more carefully, discussed their rights and requested and obtained actual copies of the landlords' utility receipts.

Although the tenants clearly paid the gas bills until all but the last few months of this tenancy, the Agreements signed by the parties only held the tenant(s) responsible for 50% of the landlords' hydro billing costs.

For the same reasons as outlined above, I find that the tenants are not eligible to receive a monetary award for overpaid gas bills stemming from their joint tenancy which was created in the first Agreement, and which ended by September 1, 2011, when the

female tenant signed the second Agreement. That initial tenancy ended over two years before the tenants raised any concerns with the landlords or their representatives about this issue. If they had concerns about overpaying these utility bills during that tenancy, they should have raised them during the course of that tenancy or shortly thereafter. I dismiss the tenants' application for a monetary award stemming from overpaid gas bills from September 1, 2009 until September 1, 2011, without leave to reapply.

On a balance of probabilities and based on the sworn testimony and written evidence supplied by the parties, I find that the landlords have overcharged the tenants for 50 % of the gas bills for this rental property for the period from September 1, 2011 until November 21, 2013. During the entire course of this second tenancy created on September 1, 2011, the sole extra charge which the second Agreement allowed the landlords to apply to the female tenant was 50% of the hydro costs for this rental property.

In coming to this determination, I have given regard to the legal principle of "*contra proferentem*." This is a rule courts use when interpreting contracts. In plain English, this means that if there is an ambiguous clause in a contract it will be interpreted against the party responsible for drafting the clause. I heard conflicting evidence as to whether the tenants actually ever entered into an oral agreement with the landlord(s) or the landlords' representative to pay 50% of the hydro and gas costs for this rental property. When the tenants finally raised concerns about this after reviewing the wording of the landlord's irregularly worded second Agreement, they clearly began raising concerns that they had been paying for a service that was supposed to have been included in their monthly rent during the course of their tenancy.

After reviewing the wording of the second Agreement, I find that there is no ambiguity or possible ambiguity in the wording of the signed contract that the landlords or their representatives drafted for the tenant's signature. The second Agreement clearly states that the tenant was only responsible for paying 50 % of the hydro for this property. If the landlords or their representatives overlooked adding that the tenant was also responsible for paying 50% of the gas for this property that is an oversight for which the landlords and/or their representatives as the drafters of the contract are responsible. I find no reason why the tenant(s) should be held responsible for the landlords' overcharging for a service (i.e., gas) that was supposed to have been provided to the female tenant in the second Agreement without charge.

The tenants entered undisputed written evidence that their portion of the gas bills they paid to the landlords for the period from September 1, 2009 until November 21, 2013 was \$3,251.95. The tenants' written evidence cited this figure repeatedly and the

landlords and their agent did not dispute this amount. Based on this undisputed evidence, I find that the tenants are entitled to a monetary award for the pro-rated amount of the \$3,251.95 they are claiming for the period from September 1, 2011, when the current tenancy established by the second Agreement began, until November 20, 2013. They are thus eligible for approximately 26.5 months of the 50.5 months of the gas bills they paid for the period covered by the second Agreement. This results in a pro-rated monetary award in the tenants' favour in the amount of \$1,707.27 (i.e., $\$3,251.95 \times (26.5/50.5) = \$1,707.27$) for the recovery of the payments the tenant made to the landlords over this period.

I have also considered the tenants' claim for the recovery of one day's rent for a day when a water tank broke on March 24, 2014 and left them without water for a 24-hour period. The tenants requested a monetary award of \$45.00 for loss of this service for one day, and \$30.00 for extra hydro used to dry the premises after this flooding. While it is unfortunate that the tenants were inconvenienced by this incident, I find no evidence whatsoever that the landlords could in any way be held responsible for negligence or a failure to attend to this matter in a timely fashion. Equipment sometimes malfunctions and repairs become necessary, sometimes causing disruption to those living in the premises. The landlords appear to have acted on this incident quickly and effectively. As there is no evidence before me that would enable me to issue a monetary award for some type of loss in the value of this tenancy due to the landlords' actions stemming from this incident, I dismiss this portion of the tenants' application without leave to reapply.

As the tenants have been partially successful in this application, I allow them to recover their filing fee from the landlords.

Conclusion

I allow the tenants' application to cancel the 10 Day Notice with the effect that this tenancy continues. The landlord's application for an end to this tenancy on the basis of the 10 Day Notices is dismissed without leave to reapply. The landlord's 10 Day Notice is of no force or effect.

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants to recover losses arising out of this tenancy and their filing fee:

Item	Amount
Overpaid Rent March and April 2014	\$18.00
Overpaid Utilities (Gas Bills)	1,707.27
Recovery of Filing Fee for the Tenants' Application	50.00
Total Monetary Order	\$1,775.27

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the landlord's monetary claim without leave to reapply.

I cancel the Notice of Rent Increase issued to the tenant on November 27, 2013, which is of no force or effect. In accordance with the powers delegated to me under the *Act*, I order that the correct current monthly rent for this tenancy is set at \$1,350.00. As per the terms of the second Agreement, the tenant is not responsible for paying any portion of the gas bill for this rental property.

As this tenancy is continuing, the tenants' security deposit remains in place and there is no need to consider the landlord's application to retain the security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 05, 2014

Residential Tenancy Branch

